

7.43 Checklist 3: Contested Hearing

- ☐1. If probationer is not represented by counsel, readvise probationer of the right to the assistance of an attorney, and that if he or she is financially unable to obtain an attorney but wants an attorney, the court will appoint one at public expense.
 - ☐Ask probationer to affirm that he or she does not want an attorney's assistance; or
 - ☐If counsel is requested, adjourn hearing and appoint counsel.
- ☐2. Hold revocation hearing at which:
 - ☐The rules of evidence other than those with respect to privileges do not apply.
 - ☐The court may consider only evidence that is relevant to an alleged violation.
 - ☐All evidence against probationer is disclosed to probationer.
 - ☐Probationer has right to appear, present evidence, and cross-examine witnesses.
 - ☐The state must establish a probation violation by a preponderance of the evidence.
- ☐3. Make findings of fact.
- ☐4. On the record or in a written opinion made a part of the record, state separately the conclusion of law as to whether the charged violation(s) have or have not been established by a preponderance of the evidence, and direct entry of the appropriate judgement.
- ☐5. If the court finds that the probationer violated his or her probation, schedule a date for sentencing or proceed to sentencing if in possession of an updated presentence report.
 - ☐Unless it is certain that a prison sentence will not be imposed, refer probationer to probation department for preparation of an updated presentence report.
- ☐6. Set, continue or deny bail, as appropriate.